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15 Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

¹⁸ UNITED STATES OF AMERICA.

Civil No.

Plaintiff,

v

IN ADMIRALTY

604

DECLARATION OF R. MICHAEL
UNDERHILL IN SUPPORT OF
APPLICATION FOR ORDER
FOR ISSUANCE OF WARRANT
OF MARITIME ARREST PURSUANT
TO SUPPLEMENTAL ADMIRALTY
RULE C(3)(a)(i) OF THE FED.R.CIV.P.
AND N.D. CAL. LOCAL ADMIRALTY
RULE 3-1(a)

Defendants.

1 R. MICHAEL UNDERHILL hereby declares as follows:

2 1. I am the Attorney in Charge of the Department of Justice, Torts Branch, Civil
3 Division, West Coast Office, and one of the attorneys for the United States in this matter. I make
4 this Declaration based upon personal knowledge or upon information officially furnished to me.

5 2. The United States has filed a verified complaint as the result of the allision of the
6 defendant vessel M/V COSCO BUSAN with the San Francisco-Oakland Bay Bridge on November
7 2007.

8 3. The allision with the Bridge resulted, *inter alia*, in a rupture of the Vessel's tanks,
9 thereby allowing a portion of the Vessel's bunkers to be discharged into navigable waters of the
10 United States and onto adjoining shorelines, including, but not limited to, navigable waters and
11 adjoining shorelines of San Francisco Bay, including its appurtenant waters and tributaries; the
12 Pacific Ocean, including, but not limited to, the Gulf of the Farallones National Marine Sanctuary
13 and the Monterey Bay National Marine Sanctuary. The two Marine Sanctuaries were established
14 pursuant to the National Marine Sanctuaries Act ("NMSA"), 16 U.S.C. §§ 1431, *et seq.*, and are
15 subject to the protections of the NMSA.

16 4. The allision with the Bridge also resulted in the discharge of a portion of the Vessel's
17 bunkers into the navigable waters and adjoining shorelines of units of the National Park System,
18 including, but not limited to, the Golden Gate National Recreation Area, Point Reyes National
19 Seashore, San Francisco Maritime National Historic Park, Rosie the Riveter/World War II Home
20 Front National Historic Park, and other resources subject to the protections of the Park System
21 Resource Protection Act ("PSRPA"), 16 U.S.C. § 19jj, *et seq.*, PSRPA.

22 5. As a direct and proximate result of the allision and resulting oil spill, the United
23 States has sustained damages within the meaning of, *inter alia*, the NMSA and the PSRPA and,
24 further, will continue to sustain such damages.

25 6. As set forth in the Verified Complaint, the United States filed this suit for damages
26 pursuant to the NMSA and the PSRPA, both of which provide for strict liability and, relevant here,

1 expressly provide for *in rem* liability and a maritime lien upon vessels. NMSA, 16 U.S.C. §
2 1443(a)(2); PSRPA, 16 U.S.C. § 19jj-1(b).

3 7. Pursuant to the NMSA, 16 U.S.C. § 1443(a)(2), and the PSRPA, 16 U.S.C. § 19jj-
4 1(b), the United States has maritime liens, enforceable *in rem*, against the defendant vessel M/V
5 COSCO BUSAN.

6 8. As a result of the foregoing, the United States is entitled to issuance of a warrant of
7 arrest for the defendant vessel M/V COSCO BUSAN pursuant to Supplemental Admiralty Rule C(3)
8 of the Federal Rules of Civil Procedure and Local Admiralty Rule 3-1(a) and (d).

9 I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is
10 true and correct.

11 DATED: November 28, 2007.



R. MICHAEL UNDERHILL